

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EDWIN ALICEA RAMOS	:	
	:	
V.	:	CIV. NO. 3:01CV1648 (AHN)
	:	
JO ANNE BARNHART,	:	
COMMISSIONER, SOCIAL SECURITY	:	
ADMINISTRATION	:	
	:	

RECOMMENDED RULING

This action, filed under §205(g) of the Social Security Act ("the Act"), 42 U.S.C. §405(g), as amended, seeks review of a final decision of the Commissioner of Social Security ("the Commissioner"), in which she found plaintiff was not entitled to Disability Insurance Benefits ("DIB") or Supplemental Security Income ("SSI").

For the reasons that follow, plaintiff's Motion for Order Reversing the Decision of the Commissioner [Doc. #28] is **GRANTED in part and DENIED in part**. Defendant's Motion for Order Affirming the Decision of the Commissioner [Doc. #30] is **GRANTED in part and DENIED in part**.

ADMINISTRATIVE PROCEEDINGS

On December 14, 1998, plaintiff filed an application for Disability Insurance Benefits ("DIB") (Tr. 77-81), and on May 21, 1999, he filed an application for Supplemental Security Income ("SSI"), alleging disability since January 1, 1998 (Tr. 93, 106, 396). His applications were denied initially and on

reconsideration (Tr. 63-67, 69-72).

On December 21, 1999, Administrative Law Judge (ALJ) Bruce Zwecker held a hearing on plaintiff's claims (Tr. 36-60).¹ On January 27, 2000, the ALJ issued a decision denying the claims. (Tr. 17-25).

Plaintiff thereafter appealed the ALJ's decision. (Tr. 11). On June 20, 2001, the Appeals Counsel denied plaintiff's request for review, making the ALJ's January 27, 2000, decision the final decision of the Commissioner, subject to judicial review. (Tr. 7-9). Plaintiff proceeds pro se on this appeal.

BACKGROUND

Edwin Alicea Ramos was born on May 30, 1956 (See Tr. 22).² He was 43 years old on the date of his administrative hearing. (Tr. 22). Plaintiff has a high school education. (Tr. 22). He is illiterate in the English language. (Tr. 22). Plaintiff's past relevant work, see 20 C.F.R. 404.1565(a); SSR 96-8p n.2, included work as a janitor, carpenter, construction worker and eleven (11) years working for General Electric making molds for plastic parts. (Tr. 46). Plaintiff testified that the molds weighed 500 to 1,000 pounds. (Tr. 46).

¹Plaintiff was represented by counsel at the hearing. German Melendez also appeared and testified at the hearing. (Tr. 36-60).

²The administrative record filed by the Commissioner shall be referred to as "Tr.".

Medical Records

Leg Fracture

On April 4, 1994, plaintiff was treated for a tibia/fibula fracture after being struck by a car. (Tr. 139-48). Plaintiff was treated at Hartford Hospital, where a rod was placed in his leg. Id. On April 9, 1994, plaintiff was admitted to Hartford Hospital with a fever complaining of pain and swelling in his right leg. (Tr. 163). He was treated for infection with intravenous antibiotics and was discharged after a couple of days.

Disability Determination Exam

On March 30, 1999, Dr. Murray Wellner examined plaintiff for a disability determination. (Tr. 173-74). Plaintiff complained of severe right knee and right lower extremity discomfort, low back pain and left lower extremity discomfort as well. (Tr. 173). Plaintiff stated that his symptoms were constant and made worse by increased use and activity as well as adverse weather conditions. Id. Dr. Wellner noted a "tender right lower extremity, particularly effecting the right knee cap and right anterior tibial area. Full flexion of the right knee is reduced. The articular surface of the right knee is tender and slightly inflamed. Examination of the left lower extremity finds the left knee to be slightly tender and stiff. Range of motion of the left knee, for the most part, appears to be normally preserved. Examination of the low back demonstrates paravertebral

lumbosacral spine tenderness and stiffness with slight resistance." (Tr. 174). Dr. Wellner's assessment states, "[c]hronic back pain and right lower extremity discomfort secondary to motor vehicle accident injuries suffered in 1993. The patient suffers from chronic symptoms but appears to be relatively stable and use of appropriate muscle relaxants and anti-inflammatory agents is appropriate. The patient probably should avoid activities that require prolonged weight bearing including standing and ambulation." (Tr. 174). Dr. Wellner's report was sent to Connecticut Disability Determination Services. Id.

On April 13, 1999, Dr. Barbara Coughlin, a state agency physician, completed a Residual Functional Capacity ("RFC") Assessment. (Tr. 175-182). Dr. Coughlin found that plaintiff could occasionally lift up to 20 pounds and frequently lift up to 10 pounds. (Tr. 176). The Doctor also found that plaintiff would stand and/or walk (with normal breaks) for at least 2 hours in an 8 hour workday, sit about 6 hours in an 8 hour workday. Id. Dr. Coughlin noted that plaintiff was limited in lower extremities to push and/or pull. Id. The Doctor further noted "possible arthritic involvement . . . ortho[pedic] findings include some loss of right knee [range of motion], paravertebral spasm is present. Lumbar spine and l[eft] knee move normally. . . . Although claiming a need for the cane, objective findings do not support this." (Tr. 177). The Doctor indicated that plaintiff could occasionally perform postural activities (e.g.

climbing, balancing, stooping, kneeling, crouching, crawling). (Tr. 177). The Doctor noted no manipulative, visual, communicative, environmental limitations. (Tr. 178-79).

Plaintiff was seen at Hartford Hospital on July 19, 1999, complaining of body pain and constipation. He was provided with a fleet enema and milk of magnesia. [Tr. 279-281].

Treatment records from Hartford Hospital dated September 8, 1999, state that plaintiff presented complaining of sharp pain to his head and radiating pain to his legs. [Tr. 296].

An MRI performed on September 30, 1999, indicated no evidence of disc herniation involving the thoracic or lumbar spine. Clinical indications were severe back pain radiating to left leg, Upper to mid back pain. Arm numbness. A 5mm mass was located in the "proximal cauda equina However, no significant enhancement is identified. Differential possibilities include an ependymoma, other intradural masses such as neurofibroma, meningioma, or dorp metastasis is less likely due to the lack of enhancement." [Tr. 282-83]. Follow-up examination was suggested in six months. [Tr. 283].

MRI imaging of the upper GI indicated a "small periampullary duodenal diverticulum with no evidence of ulcer disease."³ [Tr.

³Stedman's Medical Dictionary, defines "peri" as "denoting around, about" and "ampulla" as "[a] sacular dilation of a canal or duct." "Duodenal" is defined as "relating to the duodenum." "Duodenum" is "[t]he first division of the small intestine, about 25 cm or 12 fingerbreadths (hence the name) in length. . . ." A diverticulum is a small pouch or sac. Most ulcers occur in that part of the small intestine.

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Imaging of the right tibia indicated fracture deformities, but healing is almost complete. [Tr. 286].

The abdomen and pelvis from the lower thorax to the symphysis pubis was imaged. There was no evidence of mass. There was a small gallstone seen in the dependent portion of the gallbladder with no adjacent inflammatory changes to suggest cholecystitis. [Tr. 287].

Imaging of the C-spine showed no dislocation or subluxation of fracture compression of the C-spine. "Right C4 foramen and left C3-C4 foramina is visualized on obliques, but cannot determine whether the narrowing is pathologic or due to x-ray projection." [Tr. 288].

Treatment notes on October 1, 1999 following the MRI state, "thoracic spine normal-lumbar spine 5 mm mass in proximal cauda equana which does not enhance. Differential diagnosis: ependymoma, less likely neurofibroma, meningioma or drop metastasis. Recommend [follow up] MRI in 6 months. [No] herniated disc." [Tr. 294].

Treatment notes on November 11, 1999, state plaintiff presented requesting pain medication to alleviate back discomfort. [Tr. 292]. Patient "was seen in Neurosurgical clinic on 10/20/99. [Patient] was told problems more likely due to generalized OA, [follow up] in 6 mo and repeat MRI and repeat in 6 mo.- Rx for Celebrex 100 mg given. [Patient] was very disappointed with visit he wanted MD to discuss possibility of

surgical intervention to alleviate pain. Patient wants a 2nd opinion with another neurosurgeon." [Tr. 292]. Ramos was given a prescription for Motrin.

Treatment notes on November 30, 1999, state plaintiff presented with complaints of pain, seeking a second opinion about neurosurgery for back pain. "I explained that the lesion was most likely not the problem. Still has same pain. . . patient is concerned because pain has increased over the years." [Tr. 293]. Plaintiff was injected with Maicaine and Lidocaine.

Treatment notes from December 7, 8 and 15, 1999, state that plaintiff reported no relief of pain following the injections and his pain may have worsened. [Tr. 291].

Mental Health Records

On September 28, 1999, plaintiff's physician completed a mental health Residual Functional Capacity ("RFC") Assessment. (Tr. 271-73).⁴ The doctor found that plaintiff had moderate limitations in his "ability to understand and remember detailed instructions," but found he could understand, remember very short and simple instructions and remember locations and work-like procedures (Tr. 271). He also found plaintiff had moderate limitations in his ability to carry out very short and simple instructions and to sustain an ordinary routine without special supervision. But he found plaintiff markedly limited in the ability to carry out detailed instructions and maintain attention and concentration for extended periods, to perform activities

⁴The physician's name is illegible.

within a schedule, maintain regular attendance and be punctual within customary tolerances, to work in coordination with or proximity to others without being distracted by them, and to make simple work-related decisions. (Tr. 271). He found plaintiff was markedly limited in his ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods (Tr. 272). The doctor found plaintiff moderately limited in his ability to interact appropriately with the general public, to ask simple questions or request assistance and to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. (Tr. 272). Finally, he found plaintiff markedly limited in his ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes, to respond appropriately to changes in the work setting, to be aware of normal hazards and take appropriate precautions, to travel in unfamiliar places or use public transportation, and to set realistic goals or make plans independently of others. (Tr. 272). The doctor provided the following narrative.

Mr. Edwin Alicia [Ramos] was referred to Crisis Intervention by medic[al] for initial evaluation on 8/3/99 for severe and incapacitating depressive symptoms. He reports being in a significant amount of pain related to his physical condition which prevents him from independent activities. He has been unable to work for 8 months because of pain [illegible]. He believes that he is incapacitated due to his pain which effects his mood, appetite and sleep. He has kept appointments for psychiatric followup at the

clinic but has not improved significantly with medication for depression and sleep. He continues to follow our treatment recommendations and attend regularly scheduled appointments. A friend accompanies him and provides transportation including assistance in obtaining prescriptions.

[Tr. 273].

The same physician prepared both mental and physical medical assessments of Mr. Ramos' ability to do work-related activities, dated September 29, 1999. The legibility of both assessments in the record is poor. On the mental health assessment, regarding ability to make occupational adjustments, the doctor found plaintiff's ability to be "fair" to follow work rules, use judgment and interact with supervisor(s), but found plaintiff's ability to be "poor/none" to relate to coworkers, deal with the public, deal with work stresses, function independently, maintain attention/concentration. [Tr. 274]. The doctor stated that Ramos "has been physically and emotionally incapacitated by pain in his back, legs, head and neck." [Tr. 275]. Regarding plaintiff's ability to make performance adjustments to a job, the doctor found Ramos had "poor/none" ability to understand, remember, and carry out complex and detailed job instructions, but had a "fair" ability to understand, remember and carry out simple job instructions. [Tr. 275]. The doctor noted "severe and incapacitating depression, [low] energy, [poor] sleep, [low] appetite with weight loss." [Tr. 275]. Regarding plaintiff's ability to make personal-social

adjustments, the doctor found Ramos had a "fair" ability to maintain personal appearance, behave in an emotionally stable manner, and relate predictably in social situations" but had a "good" demonstrated reliability. [Tr. 275]. He states, "patient focused on [illegible] to manage pain and maintain mobility." [Tr. 275]. The doctor noted plaintiff's difficulty ambulating. [Tr. 275].

On the physical medical health assessment dated November 30, 1999, the doctor noted that plaintiff's impairment affected his ability to lift/carry, stand/walk, and sit. [Tr. 276-77; 298-99]. The doctor noted it was "unknown" how many pounds plaintiff could lift and/or carry. [Tr. 276, 298]. The doctor noted "[t]he patient has chronic low back pain and atrophy of muscles [due] to disuse." [Tr. 276, 298]. He stated plaintiff was able to stand and/or walk a total of four hours in an eight hour work day and one hour without interruption, stating "weak gait and muscle atrophy." [Tr. 276, 298]. He stated plaintiff was able to sit six hours in an eight hour work day and two hours without interruption [Tr. 276, 298]: "Needs position changes for comfort [due] to low back pain." [Tr. 276, 298]. The doctor found plaintiff able to occasionally balance and kneel but never able to climb, stoop, crouch, or crawl. [Tr. 277, 299]. He found plaintiff's ability to bend and pull affected by his impairment, but found plaintiff able to reach, feel, push, see, hear and speak. [Tr. 277, 299]. Environmental restrictions noted were heights and moving machinery. [Tr. 277, 299]. The doctor noted

"all work should limit lifting bending pulling and balance but seated jobs (clerical and/or organizational jobs) ok. Mr. Alicea has atrophy and pain in his low back and legs which limits his activity." (Tr. 277, 299).

A second mental medical assessment of ability to do work-related activities was performed on December 6, 1999. The name of the physician is illegible and the copy provided in the record is poor with portions illegible. [Tr. 289-90]. Regarding Ramos' ability to make occupational adjustments, the doctor found "fair" plaintiff's ability to follow work rules, relate to co-workers, deal with the public, use judgment and interact with supervisor(s), but found "poor/none" plaintiff's ability to deal with the public, deal with work stresses, function independently, and maintain attention/concentration. [Tr. 289]. He states that, patient "is totally preoccupied with physical [illegible]." [Tr. 289]. "Emotional limitations-[patient] is totally preoccupied with his [illegible] complaint of pain-unable to focus on anything else." [Tr. 290]. Regarding plaintiff's ability to make performance adjustments to a job, the doctor found Ramos had "poor/none" ability to understand, remember, and carry out complex, detailed and simple job instructions. [Tr. 290]. The doctor stated that patient "presently has little interest in anything, poor concentration, does very little, poor appetite, limited sleep." [Tr. 290]. In the area of making personal-social adjustments, the doctor found Ramos had a "fair" ability to maintain personal appearance, and to behave in an emotionally

stable manner. [Tr. 290]. The remainder of the document is illegible.

Hearing Testimony

On December 21, 1999, plaintiff appeared with counsel at a hearing before ALJ Bruce Zwecker.⁵ At the time of the hearing, plaintiff was 43 years old. (Tr. 39). Counsel reported that plaintiff could not read, write or speak English. (Tr. 39).

Plaintiff was last employed as a maintenance custodian at the YMCA, a job he held for approximately two years. (Tr. 39). He testified that "my bones hurt, my joints, my hands, here my chest, . . . I don't remember things. Sometimes I go to the bathroom and I urinate myself." (Tr. 41). He stated that he also suffered from depression. (Tr. 41). Mr. Ramos testified that his condition began in 1993, when he was hit by a car. (Tr. 41). He stated he left his job at the YMCA because he could no longer lift five pounds and he was in a lot of pain. (Tr. 41).

Mr. Ramos stated that he had surgery on his ankle and received injections to his back to treat the arthritis pain. (Tr. 41-42). He stated he takes pain medication. (Tr. 43).

Mr. Ramos also testified that he was treated for depression at the Institute of Living. (Tr. 42). He stated he is on medication for depression and for sleep and that the medications make him dizzy and sleepy and that he feels like a zombie. (Tr. 43). He stated he naps twice a day for about an hour. He lays

⁵Also present was a Spanish interpreter (Tr. 38).

down most of the day as sitting and standing is painful. (Tr. 43). He rated his pain as "strong." (Tr. 43).

Plaintiff stated that his friend, Herman Melendez, helps him with housework and his personal needs. (Tr. 44). Plaintiff stated that he is able to dress and comb his hair without help. (Tr. 44). He can grocery shop but needs assistance carrying the bags. (Tr. 45). He testified he has difficulty walking and uses a cane. (Tr. 45). He can walk for approximately ten (10) minutes without tiring. (Tr. 45). He also stated he has difficulty sitting without pain. (Tr. 45-46).

Plaintiff is a high school graduate. (Tr. 46). He can read in Spanish only. (Tr. 47). He has vocational training in carpentry, finishing work and construction. (Tr. 46). His prior work history includes eleven years with General Electric mounting moldings, and injecting molds for plastic parts. (Tr. 46). This job required lifting molds weighing 500 to 1,000 pounds. (Tr. 46). Plaintiff testified that he has a driver's license but does not drive. (Tr. 46). Plaintiff stated that he was last employed in 1998, as a custodian at the YMCA for two years. (Tr. 51). "I shoveled snow, cut the grass, painted. I would change the bulbs, light bulbs, mopped." (Tr. 51). He testified he was unable to do the work due to pain in his back, hands and bones. (Tr. 52).

Regarding his depression, plaintiff testified that he feels "very bad. I get angry, I have to be alone. Because of the pains. . . that's why I get this way." (Tr. 46). He stated he feels weak, and can hardly get out of bed. . . "its an effort to . . .

sit, to get back up." (Tr. 46). He testified he has difficulty sleeping and eating, (Tr. 47-48) and has lost 15 pounds over the past three weeks. (Tr. 48). "I think that I don't want to even be in this world with those pains that I get." (Tr. 48). He testified that he attempted suicide a few months ago . . . "I feel like a zero." (Tr. 48). "With a rope . . . I was going to hang myself on the porch. They told me to go to that psychologist." (Tr. 49).

Regarding medical treatment, plaintiff stated he received injections to his back but it did not relieve the pain. (Tr. 50).

He stated that once in a while he will visit his friend Herman. (Tr. 49). Plaintiff lives with a roommate, Jose. (Tr. 52). Plaintiff receives \$126 in food stamps. Jose pays the rent. (Tr. 53).

Herman Melendez testified for plaintiff (Tr. 53-59). Mr. Melendez has been a friend of plaintiff since 1988. (Tr. 54). He stated that, since the accident in 1993, plaintiff has been unable to do "certain stuff, like walking normally, or running. Or riding bicycle or swimming, he's not, you know, able to do it, he's not able to do it." (Tr. 54). He stated that plaintiff complains of pain a lot . . . he always complains." (Tr. 54-55). "[B]efore the accident he was a really strong man, he used to work a lot. He used to do a lot of hard work, construction work. And right after the accident, even his mental condition is not stable, he's sometimes - he's always like a druggie, or dizzy or like he's not in this world." (Tr. 55). He explained that,

"[plaintiff] had a lot of problems sleeping during the night, so during the day most of the time he's in the bed trying to sleep." (Tr. 55). Mr. Melendez testified that plaintiff's doctor told him that it "is because his medication, he's not - his thoughts [are] not clear, you know when he speaks, when he tries to remember some things he's not able to do it right away." (Tr. 55). "I mean he's confus[ed], he needs time in order to remember, base his thoughts, you know what I mean." (Tr. 57).

Melendez stated that Jose, plaintiff's roommate, helps with the cooking and cleaning. (Tr. 56). Melendez testified that plaintiff does nothing during the day. "He just sits down watch TV or that's why he'll call me most of the time too, because he wants to talk to somebody. Because his other friend works during the day, you know. So he don't have anybody to speak to, you know." (Tr. 56). Melendez stated that he helps with the grocery shopping or Jose will do it. (Tr. 56).

Regarding plaintiff's ability to work, Melendez testified, "[w]ell the way I see it, I believe he's not capable due to his condition. Physically, mentally, the pain-he's always complaining, he complains almost 99 percent of his body pain, he's got pains so, I don't think . . ." he can work in that condition. (Tr. 57). He testified that Ramos is limited because he cannot speak the language. (Tr. 57).

Regarding plaintiff's mental health, Melendez stated, "if you are asking him a question he don't answer right away. He needs time to answer. . . ." (Tr. 57). Melendez testified that he

has to call plaintiff to remind him of appointments and then when he arrives at plaintiff's house he is still in bed and he needs help getting up and dressed. (Tr. 58).

Disability and the Standard of Review

To be eligible for supplemental security income, Mr. Ramos must establish that he suffered from a disability within the meaning of the Social Security Act. The Act defines "disability" as an inability to engage in substantial gainful activity by reason of a medically determinable impairment that can be expected to cause death or to last for twelve continuous months. 42 U.S.C. §1382c(a)(3)(A). Mr. Ramos was disabled if his impairments were of such severity that he was unable to perform work that he had previously done, and if, based on his age, education, and work experience, he could not engage in any other kind of substantial gainful work existing in the national economy. 42 U.S.C. §1382c(a)(3)(B).

This standard is a stringent one. The Act does not contemplate degrees of disability or allow for an award based on partial disability. Stephens v. Heckler, 766 F.2d 284, 285 (7th Cir. 1985). "Disability" is defined as an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or expected to last for a continuous period of not less than 12 months." 42 U.S.C.

§423(d)(1).

With regard to his claim for a period of disability and disability insurance benefits, the ALJ found that Mr. Ramos met the nondisability requirements set forth in Section 216(I) of the Social Security Act and was insured for disability benefits through the date of the decision (Tr. 17).

In evaluating Mr. Ramos' case, the ALJ followed the familiar five-step analysis, set forth in 20 C.F.R. §416.920, to determine whether plaintiff was disabled under the Social Security Act. The steps are as follows:

(1) Is the claimant engaging in substantial gainful activity? 20 C.F.R. §§416.910(b), 416.972(b). If so, he or she is not disabled. 20 C.F.R. §416.920(b).

(2) If not, does the claimant have an impairment or combination of impairments that are severe? If not, he or she is not disabled. 20 C.F.R. §416.920©.

(3) If so, does the impairment(s) meet or equal a listed impairment (the "Listings"), in the appendix to the regulations? If so, the claimant is disabled. 20 C.F.R. §416.920(d); Bowen v. Yuckert, 482 U.S. 137, 141 (1987); Balsamo v. Chater, 142 F.3d at 79-80.

(4) If not, can the claimant do his or her past relevant work? If so, he or she is not disabled. 20 C.F.R. §416.920(e).

(5) If not, can the claimant perform other work given his or her residual functional capacity, age, education, and experience? If so, then he or she is not disabled. A claimant is entitled to

receive disability benefits only if he cannot perform any alternate gainful employment. See 20 C.F.R. §416.920(f).

When applying this test, the burden of proof is on the claimant for the first four steps and on the Commissioner for the fifth step, if the analysis proceeds that far. Balsamo v. Chater, 142 F.3d 75, 80 (2d Cir. 1998) (citing cases).

The ALJ found that Mr. Ramos satisfied the first two steps. (Tr. 18-19).

At step three, the ALJ found that Mr. Ramos' impairments did not meet or equal the severity of any impairment listed in the appendix to the regulations leading to an automatic finding of disability without further analysis. (Tr. 20).

The ALJ found that Mr. Ramos "has no impairment which meets the criteria of any of the listed impairments described in Appendix 1 of the Regulations (20 C.F.R., Part 404, Subpart P, Appendix 1). No treating or examining physician has mentioned findings equivalent to the criteria of any listed impairment." (Tr. 20). Plaintiff does not contest this conclusion.

The ALJ then assessed Mr. Ramos' residual functional capacity as required in step four. The ALJ found plaintiff retained the following residual functional capacity:

to perform the exertional demands of sedentary work, or work which is generally performed while sitting and never requires lifting in excess of ten pounds (20 C.F.R. § 404.1567 and 416.967). The evidence supports a finding that he is not able to lift and carry more than 20 pounds or more than ten pounds on a regular basis, and stand or walk for more than two hours out of an eight hour work day.

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In reaching this conclusion, the undersigned [ALJ] adopts the findings of Barbara Coughlin, M.D., the State Agency medical consultant at the reconsideration level regarding the claimant's abilities to do work-related activities. The [ALJ] finds that Dr. Coughlin's opinion that the claimant can lift and carry up to 20 pounds on an occasional basis with a limitation on standing and walking for no more than two hours with limitations on postural activities as a result of evidence in the file and is not inconsistent with the other substantial evidence in the record. Thus, Dr. Coughlin's opinion is entitled to substantial weight.

(Tr. 21).

The ALJ found that plaintiff is not capable of performing his past relevant work as a material handler, a shipping and receiving person, and a day laborer. [Tr. 22-23]. "In his past jobs, Mr. Alicea Ramos was required to lift more than 20 pounds, stand for prolonged periods and perform other strenuous activities. Since the claimant can perform no more than sedentary work, he is incapable of resuming former employment." [Tr. 22].

The ALJ concluded that, although Mr. Ramos lacked the residual functional capacity to return to his former employment, there were jobs, existing in significant numbers in the national economy, which the claimant is able to perform. (Tr. 22). The ALJ found,

1. The claimant met the disability insured status requirements of the Act on January 1, 1998, the date the claimant stated he became unable to work, and has acquired sufficient quarters of coverage to remain insured through at least December 31, 2000.

2. The claimant engaged in substantial gainful activity through December 31, 1998.
3. Beginning January 1, 1999, the medical evidence establishes that the claimant has residuals from a fracture of the right lower extremity and fibromyalgia, impairments which are severe but which do not meet or equal the criteria of any of the impairments listed in Appendix 1, Subpart P, Regulations No. 4.
4. Although the claimant has an underlying medically determinable impairment that could reasonably cause the pain (or other symptoms) alleged, his statements concerning his impairments and their impact on his ability to work are not entirely credible in light of discrepancies between the claimant's assertions and information contained in the documentary reports and the reports of the treating and examining practitioners.
5. The claimant lacks the residual functional capacity to lift and carry more than 20 pounds occasionally or more than ten pounds on a regular basis, and stand or walk for more than two hours out of an eight hour work day, or perform tasks which require more than occasional climbing, balancing, stooping, kneeling, crouching, and crawling.
6. The claimant is unable to perform his past relevant work as a material handler, a shipping and receiving person, and a laborer.
7. The claimant's capacity for the full range of sedentary work is diminished by his inability to perform tasks which require more than occasional climbing, balancing, stooping, kneeling, crouching and crawling.
8. The claimant is 43 years old, a "younger individual age 18-44."
9. The claimant has a high school education but is illiterate in the English language.
10. The claimant has unskilled work experience.
11. Based on an exertional capacity for sedentary work, and the claimant's age, educational background, and work experience, Sections 404.1569 and 416.969 and Rule 201.23, Table 1, Appendix 2, Subpart P, Regulation No. 4, would direct a conclusion of "not disabled."

12. The claimant's capacity for sedentary work has not been significantly compromised. A finding of "not disabled" is therefore reached within the framework of the above cited rule.
13. The claimant has not been under a disability, as defined in the Social Security Act, at any time through the date of this decision.

(Tr. 23-24).

Standard of Review

The Social Security Act provides for judicial review of the Commissioner's denial of benefits. 42 U.S.C. §1383(c)(3). The scope of review of a social security disability determination involves two levels of inquiry. The court must first decide whether the Commissioner applied the correct legal principles in making the determination. Next, the court must decide whether the determination is supported by substantial evidence. See Balsamo v. Chater, 142 F.3d 75, 79 (2d Cir. 1998). Substantial evidence is evidence that a reasonable mind would accept as adequate to support a conclusion; it is more than a "mere scintilla." Richardson v. Perales, 402 U.S. 389, 401 (1971); Yancey v. Apfel, 145 F.3d 106, 110 (2d Cir. 1998). The substantial evidence rule also applies to inferences and conclusions that are drawn from findings of fact. See Gonzalez v. Apfel, 23 F. Supp. 2d 179, 189 (D. Conn. 1998); Rodriguez v. Califano, 431 F. Supp. 421, 423 (S.D.N.Y. 1977). The court may not decide facts, reweigh evidence or substitute its judgment for that of the Commissioner. See Dotson v. Shalala, 1 F.3d 571, 577

(7th Cir. 1993). The court must scrutinize the entire record to determine the reasonableness of the ALJ's factual findings. Furthermore, "[w]here there is a reasonable basis for doubt whether the ALJ applied correct legal principles, application of the substantial evidence standard to uphold a finding of no disability creates an unacceptable risk that a claimant will be deprived of the right to have [his] disability determination made according to correct legal principles.'" Schaal v. Apfel, 134 F.3d 496, 504 (2d Cir. 1998) (quoting Johnson v. Bowen, 817 F.2d 983, 986 (2d Cir. 1987)).

DISCUSSION

Plaintiff raises three basis for reversal of the ALJ's decision.⁶ He first argues that the medical evidence supports a finding of medical disability that is expected to last for a continuous period of not less than twelve (12) months. He next argues that the ALJ erred when he failed to have a vocational expert testify where the medical evidence clearly warranted it. Finally, plaintiff contends that the ALJ erred "when he ruled that no treating physician has mentioned findings equivalent to the criteria of an impairment" [Doc. #28 at 2].

⁶The Court notes that plaintiff filed this appeal pro se notwithstanding that he testified in Spanish and claimed that he is illiterate in the English language and required an interpreter at the hearing. (Tr. 36-60).

1. Disability

Plaintiff argues that the medical evidence supports a finding of medical disability. In support, plaintiff directs the Court to three mental health assessments dated September 29 and November 30, 1999, at Exhibits 12F (Tr. 271-73), 13F (Tr. 274-75) and 17F (Tr. 276-77, 298-99).⁷ He contends that these assessments, prepared by his treating physicians, were not given consideration by the ALJ. He states that his testimony supported the medical evidence provided to the ALJ. He reports that his condition is unchanged and he is still unable to return to work. [Doc. #28 at 2].

"Disability" is defined as an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or expected to last for a continuous period of not less than 12 months." 42 U.S.C. §423(d)(1).

Plaintiff's contention that the ALJ did not consider these mental health assessments is not supported by the record. The ALJ noted that plaintiff was diagnosed in August 1999 with "a single episode of severe major depression." (Tr. 19). The ALJ's decision

⁷Exhibit 12 F is a Mental Residual Functional Capacity Assessment dated September 29, 1999. Exhibit 13 F is Medical Assessment of Ability to do Work-Related Activities (Mental) dated September 29, 1999. Exhibit 17F is a Medical Assessment of Ability to do Work-Related Activities (Mental) dated November 30, 1999. The document labeled Exhibit 17F appears twice in the record at transcript pages 276-77 and at 298-99. For consistency, the Court will cite to these exhibits by the transcript page number.

cites to plaintiff's treating physicians' findings on September 29, 1999, as follows:

While the claimant's treating physician indicated on September 29, 1999, that the claimant had severe, incapacitating depression which precluded all work activities, the undersigned notes that no additional treatment records were submitted since August 1999 and the claimant has not actively participated in therapy. Therefore, the undersigned cannot assign controlling weight to this opinion because it is not supported by objective medical evidence and does not meet the durational requirement of an impairment lasting 12 months. Therefore, the undersigned finds the claimant has no severe mental impairment.

(Tr. 19-20). The ALJ further referenced the treating physician's November 30, 1999 assessment, stating,

On November 30, 1999, the claimant's treating physician reported the claimant had back pain and atrophy which limited his activities. At this time, it was reported the claimant would be able to stand and walk for a total of four hours and sit for a total of six hours, with position changes as needed. Limitations were placed on the claimant's postural activities, as well as bending and pushing. A restriction of working around heights and moving machinery was also noted.

(Tr. 19). Accordingly, plaintiff's argument that the ALJ failed to consider this evidence is not supported. Indeed, the ALJ correctly noted that the medical opinions were not supported by clinical findings. Plaintiff provided no citation to the record to challenge this conclusion. Although plaintiff contends that his condition persists and he is still unable to return to work, (Doc. #28 at 2), the medical records do not support this contention. Finally, plaintiff fails to address the ALJ's

finding that there is insufficient evidence in the record to "meet the durational requirement of an impairment lasting 12 months." (Tr. 20); see 42 U.S.C. §423(d)(1).

Similarly, the November 30, 1999 assessment lacks supporting medical evidence. The physician indicated that plaintiff's limitations were the result of chronic low back pain and atrophy of the muscles secondary to disuse. (Tr. 19). However, a review by the Court of the contemporaneous medical records fails to substantiate this finding. On September 24, 1999, the medical records note that plaintiff walked in the clinic with no acute distress, ambulating. (Tr. 294). On October 1, 1999, plaintiff underwent an MRI of his spine. The notes state in relevant part, "thoracic spine normal. . . 5mm mass noted. . . Recommend [follow up] in 6 months. . . [no] herniated disk." (Tr. 294). On November 30, 1999, plaintiff was seen complaining of low back pain despite motor strength of 4/5 "seems symmetrical." (Tr. 293). The records state that plaintiff wanted a second opinion regarding neurosurgery for his back pain. (Tr. 293). The doctor noted, "I explained that the lesion was most likely not the problem, still has some pain." "I think he needs PT but [patient] has refused appt. in the past" (Tr. 293). There was no notation regarding atrophy as reported in the November assessment and plaintiff offers no citation to the record to support this finding.

The Court is not persuaded that the ALJ failed to consider the mental health assessments and is not persuaded that the ALJ

erred in finding that plaintiff was not disabled on the basis of this argument.

2. Vocational Expert Testimony

Plaintiff next argues that the ALJ erred when he failed to obtain the testimony of a vocational expert where the medical evidence clearly warranted it. [Doc. #28 at 2]. Plaintiff argues that the ALJ erred when he found that plaintiff was capable of sedentary work "despite medical evidence to the contrary" and when he "did not have a vocational expert identify examples of appropriate jobs for someone like claimant with significant limitations." Id.

Under the Social Security Act, the commissioner bears the burden of proof for the final determination of disability. The grids, set forth in 20 C.F.R. Pt. 404, Subpt. P, App.2, take into account a claimant's RFC, age, education, and work experience. See 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 200.00(a); 20 C.F.R. § 404.1569a(a). "'Generally speaking, if a claimant suffers only from exertional impairments, e.g., strength limitations, then the Commissioner may satisfy her burden by resorting to the applicable grids. For a claimant whose characteristics match the criteria of a particular grid rule, the rule directs a conclusion as to whether he is disabled.'" Rosa v Callahan, 168 F.3d 72, 82 (2d Cir. 1999) (quoting Pratts v. Chater, 94 F.3d 34, 38-39 (2d Cir. 1996)). "Where significant nonexertional impairments are present at the fifth step in the disability analysis, however,

'application of the grids is inappropriate.'" Rosa, 168 F.3d at 82 (quoting Bapp v. Bowen, 802 F.2d 601, 604-05 (2d Cir. 1986)). "By the use of the phrase "significantly diminish" we mean the additional loss of work capacity beyond a negligible one or, in other words, one that so narrows a claimant's possible range of work as to deprive him of a meaningful employment opportunity." Bapp, 802 F.2d at 605-06 (citations omitted).

In the present case, the ALJ found that Ramos' "capacity for sedentary work [was] diminished by significant non-exertional limitations which make it impossible for him to perform tasks which require more than occasional climbing, balancing, stooping, kneeling, crouching and crawling" (Tr. 21). However, the ALJ also found that "the range of sedentary jobs the claimant is able to perform is not significantly diminished by his non-exertional limitations." (Tr. 22). The ALJ concluded that the grids directed a conclusion that Ramos was not disabled without considering the intermediate question-whether the range of work Ramos could perform was so significantly diminished as to require the introduction of vocational testimony.⁸ Bapp, 802 F.2d at 606.

⁸ The ALJ wrote,

Born May 30, 1956, the claimant is now 43 years old. For the purpose of this decision, he is a "younger individual age 18-44" within the meaning of the regulations. Mr. Alicea Ramos has a high school education. He is illiterate in the English language. The claimant has an unskilled work background. If Mr. Alicea Ramos were capable of performing a full range of sedentary work, a finding of "not disabled" would be reached by application of Medical-Vocational Rule

On this record, the Court finds that the ALJ has not adequately explained his conflicting findings. "[W]hen a claimant's nonexertional impairments significantly diminish his ability to work, 'the Commissioner must introduce the testimony of a vocational expert or other similar evidence that jobs exist in the economy which claimant can obtain or perform.'" Bapp, 802 F.2d at 603. Because the record does not adequately explain or determine the extent to which Ramos' nonexertional impairment would further diminish his capacity to perform "sedentary work," the category into which the claimant would otherwise have been placed, the Court remands this case to the ALJ to make that determination.

Upon remand, the ALJ must reevaluate whether the Secretary has demonstrated that Ramos' capacity to perform the full range of sedentary work was not significantly diminished by his nonexertional impairments. That initial determination can be made without the introduction of vocational testimony. If nonexertional limitations significantly diminish Ramos' ability to perform the full range of "sedentary work", then the ALJ

201.23. Strict application of this rule is not possible, however, as the claimant has non-exertional limitation which narrow the range of work he is capable of performing. However, the range of sedentary jobs the claimant is able to perform is not significantly diminished by his non-exertional restrictions. A finding of "not disabled" may be reached withing the framework of the above-mentioned rule.

(Tr. 22).

should require the Secretary to present the testimony of a vocational expert or other evidence concerning the existence of jobs in the national economy for an individual with Ramos' limitations. Remand is particularly appropriate where, as here, the Court is "unable to fathom the ALJ's rationale in relation to the evidence in the record" without "further findings or a clearer explanation for the decision." Berry v. Schweiker, 675 F.2d 464, 469 (2d Cir. 1982).

3. Finding on the Medical Evidence

Last, plaintiff argues the ALJ erred when "he ruled that no treating physician . . . mentioned findings equivalent in severity to the criteria of an impairment for plaintiff." [Doc. #28 at 2].

It is undisputed that a claimant bears the burden of proof at the first four steps of the sequential evaluation. Green-Younger v. Barnhart, 335 F.3d 99, 106 (2d Cir. 2003); Shaw v. Chater, 221 F.3d 126, 132 (2d Cir. 2000). Accordingly, plaintiff is responsible for establishing, at step three of the sequential evaluation, that he meets or equals a listed impairment. Plaintiff summarily states that "[a]ccording to the medical records, [his] medical conditions meet[] the listing of impairments and should have been taken into consideration in the ALJ's decision." Id.⁹ Plaintiff offers no further argument, and

⁹Plaintiff cited to page 20 of the ALJ's ruling that states, in relevant part,

fails to identify any supporting evidence or citation to the record in support of this argument. Indeed, plaintiff fails to state which listing he claims to meet. As such, plaintiff has not demonstrated that he meets or equals any listed impairment. Nor has he demonstrated that the ALJ erred in finding that plaintiff's impairments did not meet or equal any listed impairment. (Tr. 23).

Accordingly, plaintiff's claim of error fails on this issue.

CONCLUSION

For the reasons stated, plaintiff's Motion for Order Reversing the Decision of the Commissioner [Doc. #28] is **GRANTED as to ground two and DENIED as to grounds one and three**. This case is remanded to the ALJ for further proceedings. The ALJ must reevaluate whether the Secretary has demonstrated that Ramos' capacity to perform the full range of sedentary work was

Although the claimant has an underlying medically determinable impairment that could reasonably cause pain (or other symptoms) alleged, he has no impairment which meets the criteria of any of the listed impairments described in Appendix 1 of the Regulations (20 C.F.R., Part 404, Subpart P, Appendix1). No treating or examining physician has mentioned findings equivalent in severity to the criteria of any listed impairment.

(Tr. 20).

not significantly diminished by his nonexertional impairments. That initial determination can be made without the introduction of vocational testimony. If nonexertional limitations significantly diminish Ramos' ability to perform the full range of "sedentary work", then the ALJ should require the Secretary to present the testimony of a vocational expert or other evidence concerning the existence of jobs in the national economy for an individual with Ramos' limitations.

Defendant's Motion for Order Affirming the Decision of the Commissioner [Doc. #30] is **GRANTED as to grounds one and three and DENIED as to ground two.**

Any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Rules 72, 6(a) and 6(e) of the Federal Rules of Civil Procedure; Rule 2 of the Local Rules for United States Magistrates; Small v. Secretary of H.H.S., 892 F.2d 15 (2d Cir. 1989) (per curiam); F.D.I.C. v. Hillcrest Assoc., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED at Bridgeport this 3rd day of March 2006.

/s/
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE